

	<p style="text-align: center;">DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING <i>ENFORCEMENT DIVISION</i> <i>DIRECTIVE</i></p>	<p>DIRECTIVE NUMBER 310</p> <p>DISTRIBUTION DATE October 1, 1998</p>
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1. **SUBJECT: CASE CONFERENCES**

2. **PURPOSE:** To set forth the procedures for conducting case conferences.

3. **BACKGROUND:** The Department is committed to processing its caseload with maximum efficiency. The case conference is an effective tool for expediting cases. While its purpose is investigative, it provides the opportunity for exploring voluntary resolution.

4. **PROCEDURES:**

A. **Case Conference Guidelines:**

All Consultants should be familiar with the detailed Case Conference Guidelines (refer to Attachment 1 - "DFEH Case Conference Guidelines")

B. **Selection of Cases for Case Conference:**

Cases selected for a case conference should be primarily those where a determination has been made that the Department would benefit from having the complainant and the respondent communicate directly.

- 1) The selection should be made as soon as possible after a response to service is received, although case conferences can be held later in the investigative process as well.
- 2) The District Administrator must concur that the case is suitable for a case conference and that the conference can be conducted without supervisory assistance.

C. **Notification of Parties:**

The date of the case conference will be confirmed in writing both to the complainant and the respondent (refer to Attachment 2 - "Sample Confirmation Letter"). A copy of the case conference procedure (refer to Attachment 3 - "DFEH Case Conference Procedures") should accompany the letter.

D. Consultant Responsibilities:

The Consultant will set the tone for the meeting and be responsible for:

- 1) Introducing all the participants and circulating the "Case Conference Sign-In Sheet" (DFEH-400-17).
- 2) Reiterating the purpose of the meeting, emphasizing that factual matters related to the case are NOT protected by any confidentiality provisions of the statute.

NOTE: Where a case is subsequently recommended for accusation, evidence arising from the case conference should be verified, if at all possible, outside the conference.

- 3) Reminding the participants that in keeping with the conference procedures previously provided, the Consultant will control the meeting and that all questions are to be directed to him/her.
- 4) The conference will be conducted and closed in accordance with Attachment 1 "Case Conference Guidelines."

5. APPROVAL:

Nancy C. Gutierrez, Director

Date

DFEH CASE CONFERENCE GUIDELINES

INTRODUCTION

This will serve to establish the general case conference guidelines that will be followed in all District Offices.

ADVANTAGES

The advantages of case conferencing include:

- Reduced investigative time for "non-merit" cases.
- Increased number of case completions.
- Improved case processing turnaround time.
- Increased voluntary resolutions.
- Simplification of cases which initially appear to be complex.
- Streamlined and more focused investigation of "merit" cases.

DEFINITION AND PURPOSE

The case conference is a vehicle for clarifying merit or non-merit status of a case and/or resolving a case. It is intended to define the issues, determine which elements are undisputed, clarify those areas which are unclear, resolve those disputed issues which can be resolved, and ascertain whether there is a basis for a negotiated settlement.

Case conferences can reduce the number of complaints requiring a complex investigation. The conference serves to narrow the focus of the case and facilitate any additional investigation that may be required. As a result of a conference the Consultant should be able to identify the remaining disputed areas, any information which requires further verification, and obtain missing facts that may be relevant, and representations which require substantiation.

SELECTION OF CASES WITH CASE CONFERENCE POTENTIAL

As soon as the response to service is received, the Consultant should determine whether the case lends itself to the case conference process. This decision may change based on what transpires during further predetermination settlement attempts or as a result of input from any witness, or subsequent interaction with the complainant.

It is difficult to categorize definitively the types of cases appropriate for this process. The general characteristics typically involve differences which can be

resolved by the direct testimony of the principals and/or involve complaints which cannot be evaluated solely by the examination of records and documents.

Factors indicating that a case may not be suitable for this process include:

- The matter has already been addressed by a formal internal procedure (i.e., union grievance, civil service procedures, etc.).
- The issues are complex.
- The response to the complaint is sufficient, if verified, for preparing an "05" or "20" closure.
- One or both of the parties would be adversely affected by the experience.

Cases which tend to lend themselves to the process include:

- Harassment cases (sexual, racial, etc.).
- Any uncomplicated case which does not require extensive review of documents or witness interviews.
- Any case where the allegations are numerous or unclear or where the basis for the action being complained of appears to be subjective.
- Any case where the Consultant feels the process would be expeditious.

PREPARATION FOR THE CASE CONFERENCE

The response to the complaint should be reviewed for adequacy. The complainant should be contacted to review the respondent's response. The complainant should be advised that during the case conference, he/she will be expected to give his/her version of what happened, explain why he/she believes that the action(s) was discriminatory, answer questions pertaining to the complaint and rebut, to the extent possible, the respondent's position.

The case conference should be held at the DFEH office. However, the conference can be held at another location as a result of a hardship on the participants or the respondent's insistence. Two or three tentative dates should be solicited from each party. The date selected should be the one most convenient for all the parties. The complainant should be requested to appear thirty (30) minutes before the conference so that the Consultant can review the process and prepare the complainant for his/her participation. It may also be helpful to spend a few

minutes with the respondent to explain the process and the role of the Consultant before the complainant is called into the conference room.

Relevant witnesses should be contacted prior to the case conference in order to ascertain whether they support the complainant's position. Witnesses can be used to balance the defense posture of the respondent. The Consultant should speak to the witness(es) in advance and be able to refer to what the witness(es) may testify to should the case proceed. Witness participation is discretionary with the approval of the District Administrator and should be limited to those who have solid supporting information. If witnesses are used, the complainant should arrange for them to attend. (At this point in the investigation, the witnesses are the complainant's witnesses and not the Department's.)

The Consultant should, prior to the case conference, prepare an Investigative Worksheet (IW) (DFEH-400-08) to determine the areas needing clarification, the questions to be asked, and the strengths and weaknesses of the case. The Consultant should also have a sense of what remedy might be reasonable, available remedy options, and/or the remedy the complainant is seeking.

CASE CONFERENCE STRATEGY

Arrangements: At the time of the case conference, an area should be available for either party to confer or discuss the issues privately.

Attendees: The respondent should have a representative present who has authorization to make a decision in addition to the person(s) directly responsible for the adverse action(s). Both the respondent and the complainant may have counsel at the conference *for advisory purposes only*, not to speak on their behalf. If either party wishes to bring a witness(es), it should be cleared with the Consultant. The Consultant should determine whether witness participation will contribute to the proceedings. Additionally, the conference should not be drawn out unnecessarily or become uncontrollable due to the inordinate number of people waiting to be called into the conference.

The Consultant will serve as a facilitator for the proceedings. However, as the Consultant will be directly involved in the process, the District Administrator or another party may need to be present as an observer, note taker, and/or to comment on information which may justify a remedy. This party can also help summarize the positions of the parties and articulate how the situation is viewed by the Department. However, the District Administrator is not required where a Consultant II or Consultant III is the facilitator of the conference.

CONFERENCE PROCESS

Attachment 3 outlines the general procedures to be followed by the parties during the case conference. The Consultant should retain control of the proceedings at all times and retain his/her role as a neutral fact-finder and facilitator of a voluntary resolution. Lines of questioning should be limited to the purpose of obtaining relevant information on the issue(s) that both parties may hear. This helps the participants understand the basis for the positions of each side, recognize that there are genuine differences in interpretation and that no party is either totally right or wrong. This should lay a foundation for settlement possibilities and enhance willingness to compromise.

The Consultant should keep in mind that all settlement discussions are confidential. The difference between the matters which are confidential (settlement discussions) and matters which are not (factual issues) is to be stressed in the introductory remarks and the confirmation letter (refer to Attachment 2). It is important that both parties understand the differences between factual matters and settlement discussions.

If, at any time, it appears appropriate to explore settlement possibilities, the Consultant should excuse the complainant from the conference and discuss the possibilities with him/her in private. The complainant's original demands may need to be modified in light of facts that surface during the conference. The complainant's "bottom line" should be determined in relation to the Consultant's evaluation of the merits of the case. The Consultant and the complainant should then return to the conference room and discuss the remedy with the respondent and the advantages to resolving the complaint at that juncture. The respondent should be informed that representations which strengthen a defense position may have to be substantiated through further investigation if the case is not resolved. The respondent should be queried as to what he/she is willing to propose to settle the complaint. Negotiations should then begin after taking the complainant's position into consideration.

In some instances, it may be desirable to meet privately with the respondent to discuss resolution prior to talking to the complainant. The order in which this is handled is at the discretion of the Consultant. Ordinarily, the complainant will be consulted first. If an agreement on remedy is reached, it is preferable to have the agreement drafted and signed while all parties are present. If the conference is adjourned on the basis that a remedy is being considered, an understanding as to when a decision will be reached will be made regardless of whether the offer is being contemplated by the complainant or the respondent.

If a settlement offer is inadequate or rejected, the parties should be advised as to the additional information needed to continue the investigation and the date it will proceed.

Once the conference is adjourned, the complainant should remain so that the Consultant can explain his/her options, as follows:

- The complainant can withdraw the charge in light of the facts discussed if it is highly unlikely that the case can be proven.
- The complainant can elect court action if the remedy sought is unrealistic in light of the facts of the case.
- The complainant can continue the matter and DFEH will complete its investigation. The complainant should be advised as to what DFEH will need to find in order to prove the merits of the complaint.

FOLLOW-UP TO CONFERENCE

Unless there is a settlement agreement (effectuated or pending), the investigation should be completed as quickly as possible. To build on the momentum of the conference, cases may be pursued post-conference out of order as long as;

- A field investigation is not necessary;
- There is no risk of other open cases in the Consultant's caseload expiring or Progress Memos being submitted to the Legal Division with less than ninety (90) days remaining until the anniversary date.
- Processing timeframes for other DFEH priority cases (i.e., retaliation cases) can still be met.

The Consultant may be able to prepare an "05" or "20" closure based on the information in the file and that gathered at the conference. Where relevant information is not disputed by the complainant, substantiation is usually not necessary. Where additional records are required, a letter of request should be sent to the respondent as soon as possible.

COMMON MISTAKES TO AVOID

1. POOR CASE ANALYSIS: PREPARATION

The Consultant is not able to define or clarify the issues because he/she is not fully familiar with the case and/or the strengths and weaknesses of the complaint.

2. POOR PREPARATION OF CASE DOCUMENTS:

The Consultant shuffles through the case file looking for papers. Relevant documents should be tabbed prior to the conference.

3. POOR EXPLANATION TO PARTIES AS TO THE DEFINITION OF "SIMILARLY SITUATED:"

The Consultant and the other parties have different opinions as to who is similarly situated. The matter goes undiscussed and a common frame of reference is not established.

4. POOR QUESTIONING OF PARTIES:

The Consultant's questions are random with no clear relevance to the issue(s) at hand. Neither party understands the direction of the Consultant's questions.

5. NO PREVIOUS AGREEMENT AS TO WHO WILL ACT AS THE RESPONDENT'S SPOKESPERSON:

The Consultant and respondent argue about the role of the attorney because the respondent arrived at the meeting with the expectation that the attorney would be able to speak on his/her behalf.

6. PREFERENTIAL TREATMENT OF PARTICIPANTS:

The Consultant is demanding/terse with the respondent but answers questions for or is sympathetic to the complainant or vice versa.

7. NOT LISTENING:

The Consultant focuses on his/her issues and is not responsive to the points raised or questions asked by the other parties.

8. GIVING SOME INDICATION OF PRELIMINARY DETERMINATION:

The Consultant announces in front of all parties that the evidence appears insufficient/sufficient to prove a violation of the statute instead of reserving such an assessment for private consultation with the parties.

9. THINKING THE SOLE PURPOSE OF CONFERENCE IS TO SETTLE THE CASE:

The Consultant loses interest in the process and only goes through the motions when it is determined that settlement is impossible, thereby losing a valuable opportunity to obtain further investigative information.

10. MOVING TO SETTLEMENT DISCUSSIONS PREMATURELY:

The Consultant suggests settlement before the parties have ample time to air their views, thereby giving the impression that settlement is DFEH's sole objective of the conference and not the information being presented.

SAMPLE CONFIRMATION LETTER

[Date]

[Name]

[Address]

Re: [Case Number]
[Case Name]

Dear

This is to confirm that a case conference to discuss the above-captioned complaint has been scheduled as follows:

Date:

Time: [set time 30 minutes earlier for complainant]

Location:

Allow a minimum of two hours for the conference. Bring with you any papers or records you feel are relevant to the case which have not been previously submitted. If you wish to have a witness present, approval should be obtained from the consultant.

Enclosed is an explanation of our process for the case conference. You will note that the conference is primarily an investigative technique designed to expedite processing of the complaint. Any factual statements or evidence discussed during the conference will become part of the file and will be used in any further proceeding, should that become necessary. In the event the parties explore voluntary resolution, any offers or counteroffers made will remain confidential.

If you have any questions, feel free to call me.

Sincerely,

Consultant
Telephone Number:

Enclosure

DFEH CASE CONFERENCE PROCEDURES

Please take time to read the following material. It is provided to ensure that all parties participating in a case conference understand the procedures.

The case conference is an informal investigative procedure designed to expedite resolution of disputed issues. It is not an adversarial proceeding or a hearing. In order for the conference to accomplish its purpose of establishing facts and enabling the Department to assess the substance of the allegations, the DFEH Consultant will facilitate the proceedings. Witnesses will not be present during the case conference except when testifying. Each witness will wait outside the conference room until he/she is called to provide information pertinent to the complaint.

CONFERENCE FORMAT:

Introduction and Opening Statement{tc \l1 "Introduction and Opening Statement}

The Consultant will introduce all participants, who will be asked to give their names, titles, and daytime telephone numbers on a sign-in sheet. Next, the Consultant will make an opening statement to ensure that all parties understand the purpose of the conference and that:

- A DFEH representative will take conference notes for the record. These notes and the evidence discussed are not confidential.
- Any discussion of settlement offers will remain confidential and will not be included in the conference notes.
- If counsel for the respondent and/or the complainant is present, he/she will be limited to an advisory role and will not be permitted to speak for his/her client or to cross-examine.
- Each allegation of the complaint will be discussed; the complainant will be allowed ample time to explain and support each allegation; the respondent will be allowed ample time to present and defend his/her position.
- All questions will be raised through the DFEH Consultant. Cross-conversation or participant's questioning each other directly is discouraged.